

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edwin Peña	Team: Team # 1	CCRB Case #: 200403195	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/03/2004 1:00 AM	Location of Incident: in the vicinity of 1073 Atlantic Avenue	Precinct: 79	18 Mo. SOL 10/3/2005	EO SOL 10/3/2005	
Date/Time CV Reported Sat, 04/03/2004 1:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/08/2004 3:50 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Keith Chatterton	07323	925067	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Robert Holt	05058	913435	079 PCT
2. SGT Sean Patterson	02379	921661	079 PCT
3. POM Alain Guerra	00729	930283	079 PCT
4. SGT William Fieger	03499	894642	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Keith Chatterton	Force: PO Keith Chatterton used pepper spray against § 87(2)(b)	

Synopsis

On April 3, 2004, at approximately 1:00 AM, § 87(2)(b) and his cousin § 87(2)(b) exited the Langston nightclub located at 1073 Atlantic Avenue in Brooklyn after a dispute erupted inside this establishment. As the two men walked along Atlantic Avenue, § 87(2)(b) remembered that he forgot his coat inside the nightclub and returned to retrieve it. As § 87(2)(b) waited for § 87(2)(b) at the corner of Atlantic Avenue and Franklin Avenue, he was approached by PO Keith Chatterton who instructed him to walk away from the corner. § 87(2)(b) informed the officer that he was not going to walk away because he needed to meet § 87(2)(b) at this corner. When PO Chatterton asked him to walk away for the second time, § 87(2)(b) told the officer in a loud tone of voice that he had the right to stand at this corner. An unidentified uniformed officer approached § 87(2)(b) and tried to convince him to walk away from the area. As § 87(2)(b) spoke with this officer, he was pepper-sprayed by PO Chatterton. (Force: Allegation A) Despite having been pepper-sprayed, § 87(2)(b) approached PO Chatterton to read his name from his nameplate and walked away from the scene.

§ 87(2)(g)

Summary of Complaint

On April 3, 2004, at approximately 1:55 AM, § 87(2)(b) contacted the Internal Affairs Bureau's Command Center to report the alleged incident. (Encl. 2A-2B) Internal Affairs Bureau Log # 04-09898 revealed that § 87(2)(b) reported that he exited a party in the vicinity of Franklin Avenue and Atlantic Avenue in Brooklyn after a dispute took place and as he walked to his vehicle, an officer (later identified as PO Chatterton) addressed him in a discourteous manner. § 87(2)(b) alleged that when he told PO Chatterton that he did not appreciate being addressed in this manner, the officer pepper-sprayed him. § 87(2)(b) advised the Internal Affairs Bureau that he was going to seek medical treatment at § 87(2)(b) (Encl. 18A-18L)

On April 3, 2004, at approximately 3:00 AM, Sgt. Joseph Tetonic and a detective by the last name Lorenzo, who are assigned to the Internal Affairs Bureau's Group 9, interviewed § 87(2)(b) § 87(2)(b) in regards to Callout # 04-856. The account provided by § 87(2)(b) of the alleged incident to these investigators was consistent with the initial statements he made at the time he filed this report. (Encl. 4A-4B)

§ 87(2)§ 87(2)(b) was interviewed by the CCRB on May 22, 2004. (Encl. 5A-5D) § 87(2)(b) is a § 87(2)(b) -old black male. § 87(2)(b)

At approximately 1:00 AM, § 87(2)(b) and § 87(2)(b) exited Langston nightclub, which is located at 1073 Atlantic Avenue in Brooklyn, after a fight broke out there. As § 87(2)(b) exited the premises, he observed that a crowd of approximately 70 individuals and 40 uniformed officers were standing in front of the nightclub. The officers were instructing the members of the crowd to disperse from the area. § 87(2)(b) proceeded to walk towards the corner of Atlantic Avenue and Franklin Avenue to wait for § 87(2)(b) who had returned to the nightclub to retrieve his coat from the coat check. § 87(2)(b) stated that the corner of Atlantic Avenue and Franklin Avenue was approximately 100 feet away from the nightclub. § 87(2)(b) did not indicate whether he was intoxicated at the time of the incident.

PO Chatterton approached § 87(2)(b) and asked him to leave the area. § 87(2)(b) told PO Chatterton that he was waiting for § 87(2)(b) who had returned to the nightclub to retrieve his coat and if he moved further away, § 87(2)(b) would not be able to find him. In a rude tone of voice, PO Chatterton asked § 87(2)(b) to walk away from the corner. § 87(2)(b) told PO Chatterton that he should not address him in that manner because he was a § 87(2)(b) -old. He admitted to telling PO Chatterton in a loud tone of voice that he had the right to stand at the corner. At this point, an unidentified uniformed officer stood between § 87(2)(b) and PO Chatterton. As this officer attempted to get § 87(2)(b) to walk away from the scene, PO Chatterton extended one arm over this officer's left shoulder and without issuing a warning,

pepper-sprayed him. § 87(2)(b) indicated that he did not make any furtive movements prior to being pepper-sprayed by PO Chatterton. § 87(2)(b) did not state the distance between him and PO Chatterton at the time the pepper spray was discharged.

After being pepper-sprayed, § 87(2)(b) approached PO Chatterton to read his last name from his nameplate and to observe the numbers on his collar brass. § 87(2)(b) also informed PO Chatterton that he would file a CCRB complaint in regards to this incident. § 87(2)(b) then walked away from the scene. § 87(2)(b) denied the use of profanity towards PO Chatterton during this incident. § 87(2)(b) stated that PO Chatterton did not request him to provide identification at the scene.

Within 30 minutes of the incident, § 87(2)(b) went to § 87(2)(b) to receive medical treatment for eye irritation, which was caused by the pepper spray. § 87(2)(b) stated that an eye-irrigation was performed in order to flush the pepper-spray from his eyes. § 87(2)(b) stated that Sgt. Joseph Tetic and a detective by the last name of Lorenzo, were assigned to the Internal Affairs Bureau, interviewed him at the hospital.

Results of Investigation

The only witness information, which was obtained by the investigator during the course of this investigation, was the name of § 87(2)(b), § 87(2)(b) who is § 87(2)(b)'s cousin, told § 87(2)(b) that he did not want to be involved in this investigation. § 87(2)(g)

Officer identification

Sgt. Tetic identified PO Chatterton as the subject officer in this case during the course of IAB Callout # 04-856. (Encl. 3A-3B)

UF-250 report

Although § 87(2)(b)'s name is not listed in this report, PO Chatterton prepared a UF-250 report for a person with his physical description. The report indicates that § 87(2)(b) was approached because he was acting disorderly and disobeying a lawful order. In this report, PO Chatterton indicated that § 87(2)(b) stated, "Fuck you. Free country I don't have to move. [sic]" PO Chatterton also documented his use of pepper-spray against § 87(2)(b) (Encl. 6A-6B)

Complaint report § 87(2)(b)

Complaint report # § 87(2)(b) indicates that when PO Chatterton asked § 87(2)(b) to walk away from the corner of Atlantic Avenue and Franklin Avenue, he refused to comply with his request. § 87(2)(b) then approached PO Chatterton in a threatening manner stating, "Fuck you, this is a free country and I am not going to move." This behavior prompted PO Chatterton to warn § 87(2)(b) that he would be pepper-sprayed if he continued to approach the officer in this manner. Because § 87(2)(b) continued to approach the officer, based on § 87(2)(b)'s "size, attitude and demeanor," PO Chatterton pepper-sprayed § 87(2)(b) in order to defend himself. (Encl. 7A-7B)

PO Keith Chatterton

PO Chatterton was interviewed by the CCRB on September 20, 2004. (Encl. 9A-9B) On April 3, 2004, PO Chatterton performed patrol duties in uniform from 12:00 AM to 8:00 AM within the confines of the 79th Precinct. PO Alain Guerra was assigned as PO Chatterton's partner.

At approximately 12:30 AM, PO Chatterton and PO Guerra transported a prisoner that was arrested by the anti-crime unit to the 79th Precinct stationhouse. At approximately 1:15 AM, a request for additional units needed was transmitted over division radio requesting officers to respond to the Langston nightclub, which was located in the vicinity of 1073 Atlantic Avenue in Brooklyn. By the time PO Chatterton emerged from the stationhouse, he noticed that PO Guerra had already responded to the radio run. PO Chatterton responded to the scene in a marked police vehicle with other uniformed officers. PO Chatterton did not recall the names of these officers or their physical descriptions.

Upon arriving at the scene, PO Chatterton observed approximately 100 individuals exiting the nightclub and numerous uniformed officers standing by its entrance, preventing the patrons from reentering the establishment. PO Chatterton and other unidentified uniformed officers walked towards the corner of Atlantic Avenue and Franklin Avenue, instructing the members of the crowd to disperse from the area. PO Chatterton instructed § 87(2)(b) to disperse from the corner. PO Chatterton stated that § 87(2)(b) was standing approximately 1,000 feet away from the nightclub when he was approached. When asked if he recognized any of the supervisors that were at the scene, PO Chatterton stated that because Sgt. Sean Patterson was the supervisor assigned to the “Cabaret” unit, it is plausible that he might have been present.

When PO Chatterton asked § 87(2)(b) to walk away from the corner for a second time, § 87(2)(b) stated, “Fuck you. This is a free country and I do not have to move.” PO Chatterton warned § 87(2)(b) that if he refused to disperse from the area, he would be pepper-sprayed. In an attempt to gain § 87(2)(b)'s compliance, PO Chatterton took out his canister of pepper spray. Despite seeing that PO Chatterton took out his canister of pepper spray, § 87(2)(b) approached the officer in a “threatening” manner. When asked to describe this “threatening” manner, PO Chatterton stated that § 87(2)(b) was approaching him with his fists clenched. Because PO Chatterton perceived that § 87(2)(b) was about to fight him, when § 87(2)(b) got within four feet away from him, he pepper-sprayed him. PO Chatterton stated that another uniformed officer was standing next to him at the time. PO Chatterton did not recall this officer's name or his physical description. When asked if this officer was able to see § 87(2)(b) approach him in a “threatening” manner, PO Chatterton stated that he was not sure.

After § 87(2)(b) was pepper-sprayed, he approached PO Chatterton, took a look at his collar brass and ran away from the scene. When asked why he did not arrest § 87(2)(b) when he approached to look at his collar brass, PO Chatterton stated that § 87(2)(b) immediately ran away into a large crowd. When asked why he did not pursue § 87(2)(b) PO Chatterton stated that he did not have to do so because § 87(2)(b) got lost among the crowd. PO Chatterton did not request an ambulance to respond to the scene.

When PO Chatterton returned to the 79th Precinct, he notified Sgt. Fieger of the incident. Sgt. Fieger instructed PO Chatterton to prepare a UF-250 report and a complaint report to document the incident. When asked why he indicated in the UF-250 report that § 87(2)(b)'s actions were “indicative of engaging in violent crimes,” PO Chatterton stated that his refusal to comply with a lawful order led him to believe so. PO Chatterton stated that before the end of his tour, he notified Sgt. Holt of the incident. Sgt. Holt asked PO Chatterton if § 87(2)(b) was arrested, and the officer informed him that he was not. Sgt. Holt also advised PO Chatterton to document the incident.

PO Alain Guerra

PO Guerra was interviewed by the CCRB on September 28, 2004. (Encl. 11A-11B) On April 3, 2004, PO Guerra performed patrol duties in uniform from 12:00 AM to 8:00 AM within the confines of the 79th Precinct. PO Guerra's partner on this date was PO Chatterton.

PO Guerra and PO Chatterton transported a prisoner to the 79th Precinct. PO Guerra stated that PO Chatterton escorted the prisoner into the stationhouse, while he remained inside their assigned marked police vehicle. When a request for police assistance was transmitted over division radio, PO Guerra waited for PO Chatterton to emerge from the stationhouse, in order to respond to the location. Because PO Guerra felt that PO Chatterton was taking a long time to come out of the stationhouse, he decided to respond to the scene alone.

Upon arriving at the scene, PO Guerra observed approximately 40 uniformed officers instructing “hundreds” of civilians to disperse from the entrance of the Langston nightclub. PO Guerra was instructed by a supervisor to stand by the entrance of the nightclub and prevent any civilian from reentering the establishment. PO Guerra stated that the entrance of this nightclub was approximately 500 feet away from the corner of Atlantic Avenue and Franklin Avenue.

PO Guerra stated that after the crowd dispersed from the area, he and several of the uniformed officers who had responded to this radio run, congregated in front of the nightclub to talk. It was at this

point that PO Guerra observed that PO Chatterton had also responded to the scene. PO Chatterton approached PO Guerra and informed him that they had to return to the stationhouse. PO Guerra stated that PO Chatterton did not mention the incident on their way to the stationhouse. PO Guerra stated that he was at the scene for approximately 30 minutes.

Once at the stationhouse, PO Chatterton told PO Guerra that he used pepper spray against § 87(2)(b). PO Chatterton did not tell PO Guerra why he used pepper spray against § 87(2)(b) nor did PO Guerra ask PO Chatterton his reason for doing so. PO Guerra assumed that § 87(2)(b) must have acted disorderly at the scene.

Sgt. Sean Patterson

Sgt. Patterson was interviewed by the CCRB on November 18, 2004. (Encl. 15A-15B) On April 3, 2004, Sgt. Patterson performed his duties in uniform from 8:05 PM to 5:02 AM. Sgt. Patterson acted as the 79th Precinct's Conditions unit supervisor on this day.

At approximately 1:00 AM, Sgt. Patterson responded to the Langston nightclub, which is located at 1073 Atlantic Avenue in Brooklyn, in regards to a "10-85" that was transmitted by an officer assigned to the 79th Precinct's Conditions unit. Upon arriving at the scene, Sgt. Patterson entered the nightclub to insure the safety of the officers who were inside. Once Sgt. Patterson confirmed that all the officers were safe, he instructed some of the officers to escort the patrons out of the premises.

Approximately 25 minutes later, Sgt. Patterson emerged from the nightclub and observed that a small group of civilians were being instructed to disperse from the area. Sgt. Patterson stated that he did not see PO Chatterton at the scene. Sgt. Patterson stated that he did not witness an officer discharge his canister of pepper spray during this radio run.

Sgt. Robert Holt

Sgt. Holt was interviewed by the CCRB on November 18, 2004. (Encl. 13A-13B) On April 3, 2004, Sgt. Holt was assigned as a patrol supervisor within the confines of the 79th Precinct from 11:05 PM to 8:05 AM. Sgt. Holt performed his duties in uniform.

At approximately 1:05 AM, Sgt. Holt responded to the Langston nightclub located at 1073 Atlantic Avenue in Brooklyn. Upon his arrival at the scene, Sgt. Holt observed that a large crowd of civilians was being instructed by five uniformed officers to disperse from the scene. Sgt. Holt entered the nightclub to make sure that the officers who were inside the premises were safe. Sgt. Holt stated that he remained inside the nightclub for approximately 20 minutes.

When asked if he had any interaction with PO Chatterton after the incident, Sgt. Holt stated that the officer approached him during the middle of their tour. PO Chatterton informed Sgt. Holt that he had used pepper spray against § 87(2)(b) outside the nightclub because he felt threatened by the manner in which § 87(2)(b) was approaching him. Sgt. Holt did not recall the actions that caused PO Chatterton to feel concerned for his safety. Sgt. Holt asked PO Chatterton if he arrested § 87(2)(b) and when the officer stated that he did not, Sgt. Holt told him that "usually when you mace somebody, somebody should be in handcuffs." When asked if PO Chatterton should have arrested § 87(2)(b) Sgt. Holt stated that because § 87(2)(b) approached the officer in a manner that made him "fear for his safety" and because the officer had to discharge his canister of pepper spray, PO Chatterton should have arrested § 87(2)(b) at the scene. Sgt. Holt pointed out that it is plausible that because § 87(2)(b) ran away from the scene, PO Chatterton was unable to effect § 87(2)(b)'s arrest. When asked if he felt that PO Chatterton should have pursued § 87(2)(b) or requested the assistance of some of the officers who were at the scene, Sgt. Holt stated that conducting an arrest among a large crowd could have possibly turned a simple arrest into a melee. PO Chatterton's decision not to arrest § 87(2)(b) was discretionary. Sgt. Holt stated that he instructed PO Chatterton to prepare a UF-250 report and a complaint report to document the incident.

Sgt. William Fieger

Sgt. Fieger was interviewed by the CCRB on November 23, 2004. (Encl. 17A-17B) On April 3, 2004, Sgt. Fieger acted as the desk officer of the 79th Precinct from 11:05 PM to 8:02 AM. Sgt. Fieger performed his duties in uniform.

Sgt. Fieger did not have any recollection of this incident. In an attempt to assist Sgt. Fieger in recollecting the events that transpired on the date of occurrence, the investigator provided a brief narrative of the incident. However, this attempt was fruitless. Sgt. Fieger did not recall interacting with PO Chatterton on this day. Sgt. Fieger stated that because he was the desk officer at the time of the incident, it was plausible that he might have signed any documentation prepared by PO Chatterton related to the incident.

As a supervisory officer, Sgt. Fieger stated that PO Chatterton should have documented the incident by preparing a complaint report and making the proper entries in his memo-book. Sgt. Fieger added that because § 87(2)(b) was pepper-sprayed at the scene, PO Chatterton should have effected his arrest.

Medical Records

On § 87(2)(b), § 87(2)(b) went to the emergency room of § 87(2)(b) complaining of eye irritation. As indicated in the Emergency Physician Record sheet, § 87(2)(b) was diagnosed with chemical irritation in his eyes and face. Excerpts from § 87(2)(b)'s medical records relevant to the present case have been included in this file. (Encl. 18A-18L)

Police Documents

Sprint report § 87(2)(b)

Sprint report § 87(2)(b) indicates that at 12:55 AM, numerous police units assigned to the 79th and 88th precincts responded to the vicinity of 1073 Atlantic Avenue in regards to a request for police assistance. (Encl. 19A-19B)

Criminal Conviction History for § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History for § 87(2)(b)

§ 87(2)(b) does not have any prior CCRB complaints on file.

CCRB History for PO Keith Chatterton

This is PO Chatterton's sixth CCRB complaint after being with the NYPD for four years. There are no substantiated allegations on his record. CCRB case 200411617, with an incident date of November 12, 2004, which contains allegations of abuse of authority, is currently under investigation. CCRB 200411723, with an incident date of November 23, 2004, which contains allegations of abuse of authority and discourtesy, is also under investigation. (Encl. 1A)

Conclusions and Recommendations

Undisputed facts

It is undisputed that on April 3, 2004, at approximately 1:00 AM, § 87(2)(b) was standing at the corner of Atlantic Avenue and Franklin Avenue in Brooklyn. § 87(2)(b) was waiting for his cousin, § 87(2)(b), to emerge from a nightclub where numerous officers had responded in regards to a dispute. PO Chatterton approached § 87(2)(b) and in a rude tone of voice, he instructed § 87(2)(b) to walk away from this corner. However, § 87(2)(b) refused to walk away because if he did, he would not be able to meet him. Furthermore, § 87(2)(b) told PO Chatterton that he did not appreciate being spoken to in a rude tone of voice. § 87(2)(g)

§ 87(2)(g)

Credibility Assessment

§ 87(2)(g)

§ 87(2)(g)

PO Keith Chatterton

PO Chatterton stated that when he instructed § 87(2)(b) to walk away from the corner, § 87(2)(b) said, “Fuck you. This is a free country and I do not have to move.” § 87(2)(b) acknowledged telling PO Chatterton in a loud tone of voice that he had the right to stand at the corner, but denied using profanity towards the officer. In order to gain § 87(2)(b)’s compliance, PO Chatterton took out his canister of pepper-spray and warned him that he would be pepper-sprayed if he refused to comply with his instruction. Despite this warning, § 87(2)(b) walked towards him with his fists clenched. In fear for his safety, PO Chatterton pepper-sprayed § 87(2)(b) when he was approximately four feet away from him. § 87(2)(b) stated that PO Chatterton did not warn him about the possible use of pepper spray against him.

PO Chatterton stated that after § 87(2)(b) was pepper-sprayed, he approached the officer and took a look at his collar brass before running away from the scene. § 87(2)(g)

Witness Officers

§ 87(2)(g)

Allegation A: PO Keith Chatterton used pepper spray against § 87(2)(b)

PO Chatterton claims that after he instructed § 87(2)(b) to walk away from the scene, § 87(2)(b) replied, “Fuck you. This is a free country and I do not have to move.” In order to gain § 87(2)(b)’s compliance, PO Chatterton took out his canister of pepper spray and warned him that he would be pepper-sprayed if he failed to walk away from the scene. At this point, § 87(2)(b) proceeded to walk towards PO Chatterton with his fists clenched. Out of concern for his safety, PO Chatterton pepper-sprayed § 87(2)(b). During his CCRB interview, § 87(2)(b) admitted that he refused to comply with PO Chatterton’s request to walk away from the scene, but denied the use of profane language towards the officer. § 87(2)(b) also denied approaching the officer with his fists clenched before he was pepper-sprayed.

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: